

# **EXHIBIT M**

**From:** [Tan, Nate](#)  
**To:** [McLennan, Mark C.](#); [Sheh, Anthony](#)  
**Cc:** [Afinogenova, Alina](#); [Brian Egan](#); [Blumenfeld, Jack](#); [Wacker, Jeanna](#); [#KEModernaSpikevaxService](#); [Carson, Patricia A.](#); [tmurray@morrisnichols.com](#); [Li, Yan-Xin](#); [Horstman, N. Kaye](#); [Genevant Team](#); [Meghan James](#); [Durie, Daralyn J.](#); [Davis, Kira A.](#); [Brausa, Adam R.](#); [Dawson, Shaelyn K.](#); [Wiener, Eric C.](#); [Lee, Annie A.](#); [Arbutus MoFo](#); [Murray, Travis](#)  
**Subject:** RE: C.A. No. 22-252-MSG Arbutus v. Moderna - Prior Litigation Materials  
**Date:** Thursday, September 28, 2023 5:21:48 PM

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**This message is from an EXTERNAL SENDER**

Be cautious, particularly with links and attachments.

Hi Mark,

Plaintiffs' investigation is ongoing, but we confirm that we have located at least some documents Arbutus produced in the Acuitas litigation (*Acuitas Therapeutics Inc. v. Arbutus Biopharma Corporation*, 2017 BCSC 199, Vancouver Registry No. S169829). Thus far, our search indicates that producing these documents requested by Moderna may require additional review in light of Arbutus's third-party confidentiality obligations.

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**From:** McLennan, Mark C. <[mark.mclennan@kirkland.com](mailto:mark.mclennan@kirkland.com)>  
**Sent:** Friday, September 22, 2023 6:25 PM  
**To:** Tan, Nate <[NTan@mofo.com](mailto:NTan@mofo.com)>; Sheh, Anthony <[ASheh@wc.com](mailto:ASheh@wc.com)>  
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**Subject:** RE: C.A. No. 22-252-MSG Arbutus v. Moderna - Prior Litigation Materials

**External Email**

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Hi Nate,

Thanks for your email.

We'll consider your proposal but could you please let us know whether Plaintiffs have confirmed that they have the documents produced in the Acuitas suit?

Thanks,  
Mark

**Mark C. McLennan**

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**Sent:** Friday, September 22, 2023 4:05 PM  
**To:** McLennan, Mark C. <[mark.mclennan@kirkland.com](mailto:mark.mclennan@kirkland.com)>; Sheh, Anthony <[ASheh@wc.com](mailto:ASheh@wc.com)>  
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**Subject:** RE: C.A. No. 22-252-MSG Arbutus v. Moderna - Prior Litigation Materials

Mark,

Plaintiffs have been diligently investigating the prior litigations referenced in your email. In light of your July 3, 2023 compromise offer regarding prior litigations, Plaintiffs understood that Moderna was narrowing its request for information from prior litigations to those listed in that letter. Since then, Moderna has declined a compromise regarding prior litigations.

Regarding your request for documents from the other prior litigations, Plaintiffs are willing to collect, review, and produce documents it has produced, to the extent available, from *Acuitas v. Arbutus*, filed October 2016 in the Supreme Court of British Columbia, if Moderna agrees to produce all documents and communications responsive to RFP 133 ("All documents and communications related to licensing negotiations regarding LNP technology between Moderna and Acuitas Therapeutics Inc. ('Acuitas') or any of Acuitas's affiliates."). To be clear, this would include Moderna collecting producing email communications between Moderna and Acuitas relating to those licenses, and relating to the *Acuitas v. Arbutus* action and the resulting settlement agreement, regardless of

whether the ESI custodians Moderna disclosed participated in those conversations.

- Regarding the other litigations Moderna is requesting, which were not listed in Moderna's July 3 letter, those litigations do not appear to be relevant to the claims and defenses in this action (including for the reasons articulated below) and thus Plaintiffs do not believe their collection and production would be proportional to the needs of the case.

*Alnylam Pharmaceuticals Inc. and Isis Pharmaceuticals Inc. v. Tekmira Pharmaceuticals Corp., No. 1:12-cv-10087 (D. Mass.)*

This litigation from over ten years ago concerned allegations of patent infringement against Tekmira. These patents are not related to any claim at issue in this case. For example, no inventor of a patent asserted in the *Alnylam v. Tekmira* case is a named inventor of any patent asserted here. The accused act of infringement is the provision of siRNA molecules. Compl. at ¶ 23. Accordingly, nothing in the *Alnylam* litigation is relevant to the claims at issue here. Further, this litigation was from a decade ago, and the burden of producing any information is high.

*Tekmira Pharmaceuticals Corp. v. Michael Hope, et al., No. S117660 in the Supreme Court of British Columbia*

- This litigation, from over ten years ago, concerned claims of breach of common law and contractual duties by M. Hope, T. Madden, and B. Mui, in their individual capacities, against Tekmira. This was not a patent case. Accordingly, there is no relevance to any issue in this case. Further, this litigation was from a decade ago in a foreign jurisdiction, and the burden of producing any information is high.

*2014 Demand for Arbitration by University of British Columbia, BCICAC File No.: DCA-1623*

- This arbitration, from almost ten years ago, concerned licensing disputes between UBC and Tekmira regarding UBC's, not Tekmira's patents, and thus did not involve the patents asserted in this action. Further, this litigation was from almost a decade ago in a foreign jurisdiction, and the burden of producing any information is high.

*University of British Columbia v. Tekmira, Superior Court of NJ (MER-L-2296-09)*

- This litigation, from over ten years ago, concerned licensing disputes between UBC and Tekmira relating to UBC's, not Tekmira's patents, and thus did not involve the patents asserted in this action. The technology at issue related to the cancer drug Marqibo, which is comprised of vincristine encapsulated in sphingomyelin/cholesterol liposomes. This technology is unrelated to any claim or defense in this case. Further, this litigation was from almost a decade ago in a foreign jurisdiction, and the burden of producing any information is high.

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**From:** McLennan, Mark C. <[mark.mclennan@kirkland.com](mailto:mark.mclennan@kirkland.com)>

**Sent:** Tuesday, September 19, 2023 11:39 AM

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**Subject:** RE: C.A. No. 22-252-MSG Arbutus v. Moderna - Prior Litigation Materials

**External Email**

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Tony,

We did not receive a response to our email from August 23 below. When do Plaintiffs expect to get back to Moderna about these materials from prior litigations and the queries below? As you know, these RFPs have been pending for more than 9 months now.

Regards,  
Mark

**Mark C. McLennan**

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**Subject:** RE: C.A. No. 22-252-MSG Arbutus v. Moderna - Prior Litigation Materials

Tony,

As requested during the meet-and-confer today, please provide an update on Plaintiffs' investigation into "the availability of material from prior litigations" referenced in your July 20 email below. As you know, these RFPs have been pending for more than 8 months.

We identified the following litigations we were aware of in our March 29 letter, and so far you have only responded on the first.

1. Tekmira Pharmaceuticals Corp., et al. v. Alnylam/AlCana, Civ. A. No. 11-1010-BLS2, in the Massachusetts Superior Court for Suffolk County;
2. Alnylam Pharmaceuticals Inc. and Isis Pharmaceuticals Inc. v. Tekmira Pharmaceuticals Corp., No. 1:12-cv-10087 (D. Mass.);
3. Tekmira Pharmaceuticals Corp. v. Michael Hope, et al., No. S117660 in the Supreme Court of British Columbia;
4. Acuitas v. Arbutus, filed October 2016 in the Supreme Court of British Columbia;
5. 2014 Demand for Arbitration by University of British Columbia, BCICAC File No.: DCA-1623;
6. University of British Columbia v. Tekmira, Superior Court of NJ (MER-L-2296-09)

We also asked Plaintiffs in our March 29 letter to identify any other lawsuits involving the patents-in-suit or otherwise affecting rights/licenses to them, and have not yet received a response.

Please provide a date when Plaintiffs will complete their investigation. We would like to wrap this issue up soon in case Moderna needs to seek the Court's assistance and/or third-party discovery.

Regards,

Mark

**Mark C. McLennan**

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